

LABOUR DEPARTMENT

The 15th May, 1968

732
 No. 4404-3Lab-68/12311.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) the President of India is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workmen and management of M/s Krishan Chawla, Proprietor Industrial Envoy, 7-B, N.I.T., Faridabad :—

BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 84 of 1967

between

SHRI A. K. DAVE, WORKMAN AND THE MANAGEMENT OF M/S KRISHAN CHAWLA,
PROPRIETOR INDUSTRIAL ENVOY., 7-B, N.I.T., FARIDABAD

Present :

Shri A. K. Dave claimant with Shri Ashok Kumar.
 Shri D. C. Bhardwaj, for the management.

AWARD

Shri A. K. Dave claims that he was employed as an Editor of an Industrial Envoy a monthly Journal, owned by Shri Krishan Chawla respondent and his services has been wrongfully terminated. This gave rise to an industrial dispute and the Government of Haryana in exercise of the powers conferred by clause (c) of sub-section (1) of Section 10 read with proviso to that sub-section of the Industrial Dispute Act, 1947, referred the following dispute to this Court for adjudication,—vide Gazette Notification No. 413-SF-III-Lab-67/26637, dated 7th September, 1967 :—

Whether the termination of services of Shri A. K. Dave was justified and in order ? If not, to what relief is he entitled ?

On receipt of the reference usual notices were issued to the parties on receipt of which the claimant Shri A. K. Dave, filed a statement of claim and the respondent Shri Krishan Chawla filed the written statement. The claimant maintained that he was employed on 8th March, 1967 by a respondent Shri Krishan Chawla as a Editor of his Monthly Journal Industrial Envoy at a monthly salary of Rs 300 per mensem with Rs 80 per mensem as Dearness Allowance with all benefits and privilege attached to the said post. It is alleged that the claimant served the opposite parties faithfully and diligently till 27th June, 1967 when his services were terminated without giving him any charge-sheet or giving him any opportunity to explain anything. It is alleged that it was not even disclosed to the claimant as to why he was being forcibly turned out and prevented from doing his duties.

On behalf of the respondent a preliminary objection was raised that the claimant applied for the post of Manager-cum-Editor,—vide his application, dated 1st January, 1967 which he submitted in response to the Advertisement given by the respondent in Hindustan Times and therefore the claimant cannot be considered as a workman as defined in the Industrial Disputes Act. It was prayed that this question be decided as a preliminary issue before dealing with the case on merits and accordingly the following preliminary issue was framed :—

Whether the claimant was not a workman as defined under the Industrial Disputes Act, 1947 and as such the reference is bad in law ?

The evidence produced by the parties were recorded and after hearing the representatives of the parties it was held,—vide my order, dated 22nd December, 1962 that the case of the claimant falls within the definition of a working journalist and under sub-section (1) of Section 3 of the working journalist (conditions of services) and Miscellaneous provisions Act, 1955. The provisions of the Industrial Disputes Act as enforced for the time being apply to the working journalist as well and so the reference could not be considered to be bad in law. My order, dated 23rd May, 1967 is Annexure 'A' and may be considered to be a part of the award.

The written statement on merits was filed by the respondent on 5th February, 1968. A plea was again taken up that the claimant Shri A. K. Dave was appointed as a Manager-cum-Editor and that he was assigned the duties of collecting the advertisement materials from different commercial and Industrial houses in order to make the Journal financially self sufficient but it is alleged that contrary to expectation Shri Dave could not bring sufficient advertisement to justify his retention in service and he himself started feeling about his inefficiency and for this reason would remain absent or on leave on one pretext or the other. It is further alleged that the management could not maintain the strength of the workers due to financial difficulties and were forced to terminate the services of all other employees engaged on the staff of the Journal Industrial Envoy and even the premises where the office and residence of the respondent was situated had to be sold out due to financial difficulties. Accordingly the following issues on merits were framed :—

- (1) Whether the work of the claimant was not satisfactory ?
- (2) Whether the claimant started absenting himself from 28th June, 1967 ?
- (3) Whether the work had to be closed due to financial difficulties and, therefore, it is not possible to reinstate the applicant ?
- (4) If the above issues are found in favour of the claimant, to what relief and compensation if any is the claimant entitled ?

Issue No. 1. The respondent Shri Krishan Chawla, Proprietor of the Industrial Envoy has appeared as a witness in support of the allegations made in the written statement. He has not said a word against the working of the claimant as a Editor. The only complaint of the respondent is that at the time when the claimant was appointed he was told that his duties would be to procure the advertisement business, arrange the sale of the Journal and help him in the collection of the materials. The witness says that during the time of interview of the candidates the duties which they were expected to perform were explained to them and these duties were also explained to the claimant at the time of his appointment but he was not able to procure any advertisement nor he was able to sell the Journal. *Vide* the order of this Court, dated 22nd December, 1967. Annexure 'A' it has already been held that the claimant was appointed as a Editor and since there was no evidence that the work of the claimant as a Editor was not satisfactory so I find this issue in favour of the claimant.

Issue No. 2. Now the evidence lead by the respondent is that the claimant left the services of his own accord on 26th June, 1967, because in the first week of June he was told that his work was not satisfactory and that he should look for another job some where else. It is, therefore, clear that the respondent was not entrusted in keeping the claimant in service. The version of the claimant is that he was pushed out of the office on 28th June, 1967 and that since then he is not been able to get any other service and is out of job. Under these circumstances it is not possible to believe that the claimant left the service of the respondent of his own accord. The version of the claimant is that he was pushed out of the office on 28th June, 1967, after he had attended the office and his presence was marked in the register appears to be collect and I find this issue also in favour of the claimant.

Issue No. 3. Shri Krishan Chawla has stated in his evidence that due to financial difficulties he has practically stopped the publication of the Journal Industrial Envoy. He says that in the months of May, June, July and August, 1966, number of his employees were 5. In May, 1967, the number of employees came down to three and in September and October, 1967, the number was reduced to two and in November, December and January, there was only one employee and after January the respondent is carrying on the work without the assistance of any employee. The respondent says that in the month of April, 1968 no issue of the Journal has been published and he had no intention of employing any staff. The respondent have been cross-examined at length but this portion of the statement had not been questioned in cross-examination and it must therefore be held that the respondent has practically closed down his office. The claimant admittedly left the service of the respondent on 28th June, 1967, and since then the respondent has not employed any person to the post of the Editor or the Managing-Editor and therefore not possible to direct the re-instatement of the claimant to any of these posts because at the present time financial position of the respondent continues and I find this issue in favour of the respondent.

Issue No. 4. Although Issue Nos. 1 and 2 have been found in favour of the claimant and the termination of his service on the alleged ground of inefficient working cannot be held justified yet in view of my findings on Issue No. 3, it is not possible to direct the re-instatement of the claimant because at present no post exists to which he can be re-instated. I therefore find this issue against the claimant.

I make no order as to costs of the proceedings.

Dated 28th April, 1968.

P. N. THUKRAL,
Presiding Officer,
Labour Court, Rohtak.

No. 836, dated 8th May, 1968

For forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated 28th April, 1968.

P. N. THUKRAL,
Presiding Officer,
Labour Court, Rohtak.

ANNEXURE A

BEFORE SHRI P.N. THUKRAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 84 of 1967

Between

THE WORKMEN AND THE MANAGEMENT OF M/S KRISHAN CHAWLA, PROP., INDUSTRIAL ENVOY, 7-B, N.I.T., FARIDABAD

Present: Shri A.K. Dave claimant with Shri Ashok Kumar.
Shri D.C. Bhardwaj, for the management.

ORDER

In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 read with proviso to that sub-section of the Industrial Disputes Act, 1947, the Governor of Haryana have referred the following Industrial dispute to this Court for adjudication, —*vide* Gazette notification No. 413-SF-III-Lab- 67/26637 dated 7th September, 1967.

Whether the termination of services of Shri A. K. Dave was justified and in order? If not, to what relief is he entitled?

736
The admitted facts of the case briefly stated are that the respondent Shri Krishan Chawla, Proprietor Industrial Envoy, 7-B, N.I.T., Faridabad got inserted in the wanted column, the following classified advertisement in the Hindustan Times, dated 21st March, 1966.—

Editor Manager for new industrial magazine, Pay Rs. 300, Box 60831-CA, Hindustan Times, New Delhi-1.

In response to this advertisement the claimant along with a large number of other persons applied for appointment to this post. The application submitted by the applicant is marked Exhibit M/1 and in the heading of this application the applicant mentioned that he was applying for the post of Manager Editor. The case of the claimant is that he was selected for appointment on 8th March, 1967 as Editor at a monthly salary of Rs 300 with Rs 80 per mensem as dearness allowance and he continued serving till 28th June, 1967 when his services were terminated without any reason or justification. He has prayed for reinstatement with full back wages.

A preliminary objection has been raised on behalf of the respondent that the claimant was appointed as a Manager Editor and as such his case is not covered under the definition of a workman as given under the Industrial Disputes Act, 1947 and as such the reference is bad in law.

The following preliminary issue was framed to dispose of this objection :—

Whether the claimant was not a workman as defined under the Industrial Disputes Act, 1947 and as such the reference is bad in law ?

No evidence has been led on behalf of the management to prove what exactly was the nature of duty which the claimant was expected to perform. Shri D.C. Bhardwaj the learned representative of the management simply tendered in evidence the cutting from the issue of Hindustan Times, dated 21st November, 1966 containing the advertisement in question and the application, Exhibit M. 1 which the claimant Shri A. K. Dave gave in response to this advertisement. Shri Bhardwaj also tendered in evidence the applications received from the other applicants and which have been marked Exhibit M/2 to M/18 for the purpose of identification.

Shri A.K. Dave in support of his allegation that he was appointed only as a Editor and not as a Manager Editor has produced in evidence a copy of the magazine "Industrial Envoy" publication in the month of June, 1967 and marked Exhibit R/1. At page 74 of this magazine Shri Krishan Chawla is mentioned as Proprietor, Printer and Publisher while Shri A.K. Dave is designated as Editor. At page 3 the respondent Shri Krishan Chawla is mentioned as Managing Editor while the claimant is mentioned as Managing Editor while the claimant is mentioned as Editor. Shri Dave has further stated in his evidence that when he went for interview in response to the advertisement, the question arose regarding the designation to be given to him. Shri Dave says that he pointed out that there is normally no post of a Manager Editor but there could be a post of a Managing Editor to which Shri Krishan Chawla replied that he himself would be the Managing Editor. The claimant says that no letter of appointment was given to him and this fact is not denied by the learned representative of the management. No other evidence has been produced by the parties and the question for determination is whether on the basis of the evidence on the record it can be said that the claimant was appointed as a Manager Editor or whether he was simply appointed as an Editor.

The learned representative of the management has submitted that from the wording of the advertisement as also the application given by the claimant in his own hand it is clearly established that the post was of a Manager Editor and the claimant was appointed against that post. A large number of authorities have been cited in support of the proposition that a person who is appointed mainly on a managerial or supervisory post would not fall within the definition of a workman as given in Section 2(s) of the Industrial Disputes Act, 1947. In case there had been any evidence that the applicant was in fact performing any managerial or supervisory duty then there would have been no difficulty in accepting the contention of the learned representative of the management that the claimant was in fact appointed against a post of a Manager Editor and not against the post of an Editor only. Accordingly to the definition of working journalist given in clause (f) of Section 2 of the working Journalists (Conditions of Service) and Miscellaneous provisions Act, 1955 (here in after referred to as the Act) an editor falls within the definition of a working journalist. Sub-Section (1) of section 3 of the Act lays down that the provisions of the Industrial Disputes Act, 1947 as in force for the time being apply to working journalist as well object to the modification specified in sub-section (2) of the Act. It is, therefore, clear that even if an editor does not fall within the definition of a workman as given in Section 2(s) of the Industrial Disputes Act, 1947, the provisions of the Industrial Disputes Act would apply to the case of an Editor. In my opinion therefore, the reference cannot be said to be bad in law because the claimant does not fall within the definition of a workman as given in the Industrial Disputes Act, 1947.

Since the respondent has not filed the written statement on merits, he is directed to do so within a week with a copy to the claimant. The case to come up on 9th January, 1968 at Ballabgarh when issues on merits would be framed.

Announced.

Dated : The 22nd December, 1967.

Camp : Ballabgarh.

P. N. THUKRAL,
Presiding Officer,
Labour Court, Rohtak.

R.I.N. AHOOJA, Secy.